

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/934642

MARK: CARMINE'S

CORRESPONDENT ADDRESS:

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1133 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Carmine's Broadway Feast
Inc.

CORRESPONDENT'S REFERENCE/DOCKET
NO:

27471.001

CORRESPONDENT E-MAIL ADDRESS:

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE:

Applicant is requesting reconsideration of a final refusal issued/mailed 10/03/2008.

After careful consideration of the law and facts of the case, the examining attorney must deny the request for reconsideration and adhere to the final action as written since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue.

Here, the services are identical in part and are otherwise highly related. With respect to Reg. No. 2864349, the examiner notes that registrant also offers banquet, bar, takeout, and catering services. With respect to Reg. No. 1444609, the examiner notes that registrant also offers catering services and restaurant take-out services. *See attached.*

If the services of the respective parties are "similar in kind and/or closely related," the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as would be required with diverse goods and/or services. *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); *see Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1242, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004); TMEP §1207.01(b).

Applicant argues that the stylizations of Applicant's Mark and the Cited Marks are sufficient to distinguish the marks. The examiner cannot agree. The question is not whether the marks can be distinguished when compared to side-by-side. The question is not whether people will confuse the marks, but whether the marks will confuse people into believing that the restaurant services they identify come from the same source. *See In re West Point-Pepperell, Inc.*, 468 F.2d 200, 201, 175 USPQ 558, 558-59 (C.C.P.A. 1972); TMEP §1207.01(b). For that reason, the test of likelihood of confusion is not


whether the marks can be distinguished when subjected to a side-by-side comparison. The question is whether the marks create the same overall impression. See *Recot, Inc. v. M.C. Becton*, 214 F.2d 1322, 1329-30, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000); *Visual Info. Inst., Inc. v. Vicon Indus. Inc.*, 209 USPQ 179, 189 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537, 540-41 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975); TMEP §1207.01(b). Here, even assuming, *arguendo*, that the stylizations are enough to distinguish the marks, the examiner notes that the marks sound similar. Similarity in sound **alone** may be sufficient to support a finding of likelihood of confusion. *RE/MAX of Am., Inc. v. Realty Mart, Inc.*, 207 USPQ 960, 964 (TTAB 1980); *Molenaar, Inc. v. Happy Toys Inc.*, 188 USPQ 469, 471 (TTAB 1975); see TMEP §1207.01(b)(iv).

Accordingly, applicant's request for reconsideration is *denied*. The time for appeal runs from the date the final action was issued/mailed. 37 C.F.R. Section 2.64(b); TMEP Section 715.03(c). If applicant has already filed a timely notice of appeal, the application will be forwarded to the Trademark Trial and Appeal Board (TTAB).

/Benji Paradewelai/
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STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

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Carmine's Restaurant - Albany writes...
Service is top notch at this award winning Capitol Region hot spot. Chef/Owner Carmine Spiro's menu features creative Italian fare with global influences, as well as hearty classics. The extensive wine list, which emphasizes Italy and California, is worth noting. Carmine's Restaurant is also home to the television studio kitchen of "Carmine's Table", seen regionally on NBC each week. The kitchen is situated behind French doors in the middle of the restaurant. Guests may reserve the chef's table in the studio kitchen for a chef's tasting menu or for a Prezzo Fisso menu tasting, each available with or without wine pairings and a personal chef.

Dining Style: Casual Dining
Cuisine: Italian, Continental
Neighborhood: Albany
Cross Street: Everett Road
Menu: [View menu on restaurant's website](#)


Dining Feedback
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Special Occasion

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Price: \$30 and under

Website: <http://www.carminesrestaurant.com>

Phone: (518) 458-8688

Hours of Operation: Lunch: Tuesday - Friday: 11:30am - 3:00pm
Dinner: Monday - Thursday: 4:30pm - 9:30pm, Friday - Saturday: 4:30pm - 10:00pm, Sunday: 4:00pm - 8:30pm

Payment Options:
AMEX, Diners Club, MasterCard, Visa

Executive Chef: Carmine Spiro Chef/Owner

Dress Code: Business Casual

Accepts Walk-Ins: Yes

Offers: Banquet/Private Rooms, Bar/Lounge, Beer, Full Bar, Non-Smoking Area, Takeout, Wheelchair Access, Wine

Parking: Private Lot

Parking Details: Well maintained, safe, private lot on premise.

Private Party Facilities: Reservations are available for large groups, call for information.

Special Occasion

Romantic

Neighborhood Gem

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Catering

If you're thinking about having your next dinner party, event or family-gathering catered with great Italian food, Carmine's Restaurant is the place to call.

At Carmine's you're not restricted to a packaged meal like you might find at some other restaurants. Everything on the menu is available for catering and Carmine is happy to accommodate special requests as well.

"People who have a party or event will often shop on-line for the dishes, prices and capabilities a restaurant or catering service has to offer," says Armand, General Manager at Carmine's. "They might search for 10 restaurants in the area, many of which will give you just a 'package' of dishes that they are willing to do for catering."


Armand's food & wine blog


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- 15% OFF Special in Feb
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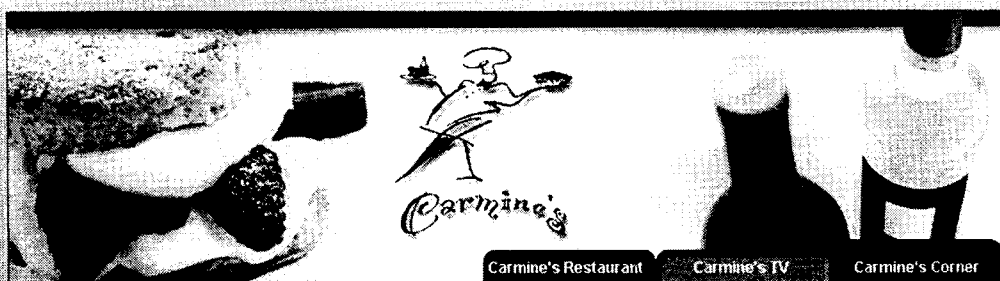
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"We have always been very flexible and accommodating about what we offer customers who request our catering service," Armand says. "Whatever you'd like, tell us and we'll provide it."

No catering event is too large or too small for Carmine's catering service to handle. "For instance, if you have a dinner party for say, eight people and you want me to come to your house to cook ... of course, I can do it more easily and inexpensively here in our studio," Carmine says. "But given the opportunity to have that conversation with you, we are certainly open to figuring a way to make your catering request work."



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Carmine's
NEW blog!
"Life at Carmine's
Restaurant"

Armand's
Food & Wine Blog

- Happy Easter!
- 15% OFF Special in Feb
- How did you end up with that wine for Thanksgiving?

About Us

Carmine's Restaurant opened at its current location at 818 Central Avenue in Albany, NY in 1996, to a critical acclaim which has grown steadily over its ten-plus years of operation. Carmine's is a unique restaurant, featuring the best of Italian cuisine, fine wines and atmosphere which have left a lasting impression on first-time and loyal customers alike.

Some will recognize Carmine from his television appearances on the cooking show, *Carmine's Table*, where he outlined recipes and cooking techniques, broadcast from his state-of-the-art kitchen/studio at the Albany restaurant, or from his new Reality show, *Carmine's* (broadcast weekday mornings at 8:00 a.m. on Fox23). What people may not know about Carmine is his background and history in the restaurant business, along with his passion for, and knowledge of, Italian cuisine, history and culture.

Carmine learned the skills and techniques in the kitchen at an early age. Growing up in an Italian-American family which traces its roots to Sicily, Carmine quickly had an understanding of the trade secrets and creativity one doesn't learn in school, those handed down through generations of families working together in the kitchen.

Growing up, Carmine fulfilled many duties at his father's family-run tavern in Brooklyn. When the opportunity to purchase his own restaurant presented itself, Carmine was working as a plumber. He hoped that his plumbing business, which was growing steadily, would help support his family until the


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hoped that his plumbing business, which was growing steadily, would help support his family until the restaurant could do that on its own.

When the restaurant became a hit, "I gave the keys of my plumbing business to my Dad, and said to do whatever he wanted with the business, 'give it to my cousins,' whatever," Carmine says. To that, his father warned, "You'll be back in the plumbing business in six months."

That was fourteen years ago.

Opening Carmine's Restaurant in Albany was "more of a happy accident than a natural progression," says Carmine. "Coming from Brooklyn, I didn't know much of anything about Albany," he says. "The Capital District might as well have been Canada to me."

In 1996, Carmine's brother, Phil was a student at Albany Law School, and, knowing Carmine was looking for opportunities for a new restaurant, called and told him of a restaurant on Central Ave., in Albany that was up for sale. "I drove up to Albany and took a look at the restaurant," Carmine says. "I had lunch and then sat on a bench outside and just watched the people coming in and out of the restaurant. I began to realize that I really liked the people here," he says.

Another factor for moving his restaurant to Albany involved the quality of life in the Capital District. Carmine says that in 1996 his wife had just given birth to a daughter, they were starting a family and he realized that he wanted his family to live in a place where he would have liked to grow up.

"Now, I think [The Capital Region] is the best place to raise a family and I'll never leave," Carmine says.

"And when we purchased the restaurant and moved up to Albany, 11 of the 20 people on my staff moved here with their families to work at the new restaurant in Albany."

Carmine's staff is very highly trained, dedicated and skilled. In an industry that is typically very transient, Carmine's has employed many of the core people since its opening.

In addition, Carmine's clientele at the restaurant is as varied socio-economically and culturally as the Capital District itself. The only way to characterize his typical clientele is by the time of their visits.

"On Friday nights, for example, we get a lot of seniors in the early evening, followed by a very diverse crowd of families toward the middle part of the night. We get a lot of families with children ... families who are trying to teach their kids about fine dining," Carmine says. "Later in the evening, it's couples, young professionals, and college students on dates. Earlier in the week, we tend to get a lot of business travelers and single diners," says Carmine.

"All are welcome, and we do our very best to satisfy."

Carmine's take on Contemporary-Italian Cuisine

Carmine's Restaurant offers the very best in contemporary-Italian cuisine. His Italian dishes do not necessarily focus on the authentic cooking styles of any one region of Italy, rather they celebrate the best dishes influenced by all of Italy and the Mediterranean.

"You won't find spaghetti and meatballs on my menu, that's more Italian-American food," he says. "You won't find classic lasagna, either, though we offer a fresh-baked rustanella (Italian slang for "skirt or wrap"). It's a more contemporary form of lasagna using fresh pasta sheets folded over a traditional, lasagna-like filling," he says.

Contemporary Italian also means that Carmine uses some ingredients outside of the traditional or authentic Italian realm of influence, "But we use Italian culinary techniques in their preparation, such as braising, Chianti, and fennel pollen, etc. For instance, I use jicama in some of our dishes. Jicama is a Mexican potato that you wouldn't find in a traditional Italian kitchen because of their availability," he says. "But the tastes of our ingredients speak for themselves."

Carmine's Take on the Restaurant Industry

Diners will agree that the restaurant industry has changed in recent years, and not necessarily for the better. According to Carmine, these changing perceptions typify the move from service-based businesses to those based on price or convenience.

Carmine says that some people may think that Italian restaurant chains are cheaper than independent restaurants like Carmine's. This is a common misconception that Carmine's hopes to change.

"In fact, we are less expensive than the chains, pound-for-pound," Carmine says.

Essentially, where Italian food is concerned, "We've become your dinner table, while the chain restaurants have become your supper table," Carmine says. "You used to go out for *dinner*... now you go out for *supper*. I'm trying to change that with our award-winning flavors, service and total-value dining experience at a reasonable price."

"Unlike the chain restaurants, every dish we offer is cooked by us, to order, here, at Carmine's. We don't defrost, microwave or use prepared contents from a bag."

Another misconception is that independent restaurants take longer to cook their entrees. This is one of Carmine's pet peeves. "Go to a chain without a reservation and they'll give you a beeper. You might wait up to an hour or two for a table," Carmine says. "Then, when you are finally seated, you'll get your entrée in just 18 minutes... Why? Because it is cooked out of a bag," Carmine says. "I could do that in my kitchen, too but I refuse to cut corners. I want you to relax and enjoy your dining experience."

In contrast, at Carmine's you'll find easy parking, you'll be seated quickly, and you will enjoy an extensive and affordable menu and wine list, salad, sorbet between courses, crystal glasses, linen and a highly trained, dedicated and friendly professional wait-staff.



(585) 663-0050

671 Maiden Lane
Rochester, NY 14615



Open Daily 11:00am - 10:00pm

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Since 1983, Carmine's has been a favorite stop for families in Greece and the greater Rochester area. Delicious food, low prices, convenience and a fun family atmosphere - that's Carmine's!

For the family on the move, Carmine's offers everything on our menu "To-go". But we don't stop there - Carmine's also has a Drive-thru Pick-up Window! Call ahead with your order and we'll have your meal prepared hot & fresh, ready for you to swing by without ever getting out of your car!



And because Carmine's is a Family Restaurant, senior citizens can take advantage of our 10% senior discount, and children 12 years old or younger can get their own Carmine's Kids Club Card for even more family savings! For added convenience, ask about our Carmine's Gift Card, in any amount. Use your Gift Card instead of cash, or get one for someone special!

At Carmine's, we love being part of the community, and we love what we do - that's why we're one of Rochester's favorite family restaurants. Come see us today!

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Carmines now offers catering for many of your favorite menu items! You can arrange for drop-off or pick-up - whatever your convenience.

Please call us at (585) 663-0050 to talk about your event plans. We'll help you put your order together, and quote you a price with the same amazing value everyone has come to expect of Carmines.



Prices here are for half-pan and full-pan quantities.
On average, a half-pan serves 12-15 people, and a full-pan serves 25-30 people.

Italian Favorites

Penne with Mozzarella \$30 \$60
Eggplant Parmesan \$30 \$60

Traditional Entrées

Beef BBQ \$40 \$80
Baked Virginia Ham \$40 \$80

Stuffed Shells	\$40	\$80	Boneless BBQ Chicken	\$40	\$80
Chicken Parmesan	\$40	\$80	Pulled Pork BBQ	\$40	\$80
Meatballs Marinara	\$30	\$60	Zweigles Hots	\$25	\$50
Italian Sausage	\$40	\$80	Hamburgers	\$30	\$60
<i>with peppers & onions</i>					

Entrée Side Dishes

Fresh Garden Salad	\$20	\$40
Baked Beans	\$25	\$50
Salt Potatoes	\$25	\$50
Oven Roasted Potatoes	\$25	\$50
Potato Salad	\$25	\$50
Macaroni Salad	\$25	\$50
Veggie Medley	\$25	\$50
Pasta Salad	\$25	\$50

Appetizers - Delights

Chicken Finger Platter	\$40	\$80
Mozzarella Stick Plate	\$30	\$60
Pizza (32 pieces)	\$14.95	
Sub Trays	\$24.95	
Chicken Wings	\$15.95	
Cold Cut Trays	\$2/person	
Fresh Rolls & Butter	\$.25/person	

*Other Menu items are available upon request.
Also available: Chips, Beverages, Utensils, Plates & Napkins.*

*Delivery Gratuity added to Drop-Off Orders.
All prices are quoted per Order.*